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SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM A DECISION OF A MEDICAL APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Medical Appeal Tribunal: Glasgow

Case No: 570 08056

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1. My decision is that the decision of the medical appeal tribunal dated 5 May 1993 is not erroneous in law.

2. This is an appeal by the claimant with leave on a question of law against the above-mentioned tribunal decision.

3. The history of the claimant's case up to the stage of the medical appeal tribunal decision now under appeal has been usefully summarised by the Secretary of State's representative in observations on this appeal. I quote from paragraphs 1 to 5 of that submission:-

> "1. On 18 June 1991 the claimant, formerly employed as an engineers helper, claimed disablement benefit in respect of prescribed disease A2 - heat cataract (pages 4-5).
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> 2. On 4 June 1992 the claimant was examined by a Consultant who reported that, in his opinion, the claimant was not suffering from prescribed disease A2 or a sequela thereof and had not so suffered at any time (pages 6-8).
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> 3. In the light of the Consultant's report dated 4 June 1992 (pages 6-8) the Adjudication Officer disallowed the claim for disablement benefit and the claimant appealed against the Adjudication Officer's decision.
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> 4. On 27 October 1992 an initial adjudicating medical authority (AMA), who had before them the Consultant's report dated 4 June 1992 (pages 6-8), decided that the claimant was suffering from prescribed disease A2 or a sequela thereof and that he had so suffered since 1 July 1972. The loss of faculty resulting from the relevant prescribed disease was reduced and impaired vision. The AMA found the disability resulting from the relevant loss of faculty to be impaired vision and finally assessed disablement at 20% from 1 July 1972 for life. The AMA also noted hypertension as an unconnected condition (pages 9-12 and 15-18).
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> 5. The decisions of the initial AMA dated 27 October 1992 on both diagnosis and disablement questions were referred by the Adjudication Officer to the Medical Appeal Tribunal (MAT) at the instigation of the Secretary of State (pages 13 and 19). The Secretary of State's observations on forms BI256 (pages 14 and 20) and the documents

as listed in the schedule of evidence on forms AT47 (please see paragraph 10) were made available to the claimant, his representative and the Medical Appeal Tribunal (MAT) before the hearing of the case."

4. The medical appeal tribunal on 5 May 1993 did not confirm the decision of the Adjudicating Medical Authority. They decided that at no time since 1 July 1972 had the claimant suffered from prescribed disease A2 or from a sequela of that disease. The tribunal noted the claimant's employment history and the clinical findings of the adjudicating medical authority and examined the claimant. They also had before them the report of the consultant at the hospital named by the claimant as having been involved in his case and who subsequently gave the report referred to at paragraph 3.3 above in which he concluded, on balance, that the claimant's cataracts were not associated with heat exposure. Explaining their adverse conclusion the tribunal stated that the rate of onset of the cataract and the type of cataract that the claimant developed were not in keeping with prescribed disease A2.

5. The claimant is, not unnaturally, aggrieved as he had succeeded before the adjudicating medical authority only to have that result reversed after the Secretary of State exercised his right to have the case referred by way of appeal to a medical appeal tribunal. However, although there is no doubt that the claimant suffers from impaired vision as a result of cataracts, the issue for the medical appeal tribunal was whether this was to be diagnosed as PD A2 "heat cataract", ie cataract consequential on exposure to heat - in this case heat exposure arising from welding operations in the claimant's past employments. It was thus a pure question of medical diagnosis for the expertise and judgment of the medical members of the tribunal. Unfortunately for the claimant the tribunal decided against him for the medical reasons explained in brief in the tribunal's decision.

6. Appeal to a Commissioner is available from the decision of a medical appeal tribunal only on a question of law affecting the tribunal's decision. The claimant does not raise any such question of law, nor does the Secretary of State's representative now concerned with the appeal. In my judgment the decision of the tribunal was one which they were fully entitled to reach and it is adequately explained. As it is not erroneous in law. I have no power to interfere with the tribunal's decision.

7. One matter arising from the record of the tribunal's decision as completed on form MAT 3(II) DIAG calls for comment although it does not in the circumstances of this case represent an error of law affecting the validity of the tribunal's decision. The second sub-head of the decision box on that form (box 1) has been completed by the tribunal so as to read:-

> "We are satisfied by fresh evidence that the decision of the Adjudicating Medical Authority dated 27/10/1992 was given in ignorance of, or was based on a mistake as to, some material fact."

In my opinion that was entirely inappropriate in this case. That sentence is intended for use and should only be used in the case of an appeal against the decision of an adjudicating medical authority given on review of an earlier decision on the basis of ignorance or mistake of material fact under the provisions of section 47(1) of the Social Security Administration Act 1992 (formerly section 110(1) of the Social Security Act 1975) and regulation 67 of the Social Security (Adjudication) Regulations 1986. In such a case of course the sentence should identify the prior decision under review and not the decision of the adjudicating medical authority upon that review which is under appeal.

8. In the present case the tribunal did not require to be satisfied by "fresh evidence" before altering the adjudicating medical authority's decision and the process was one of appeal and not review. As the Secretary of State's written observations to the tribunal correctly informed the tribunal (in paragraph 4 on page 14 of the appeal papers):-

> "The tribunal is entitled to reach its own conclusions on the whole of the case before it. It can confirm, vary, or set aside and replace, the decision of the adjudicating medical authority in the light of the evidence and its own medical judgment. It can therefore decide afresh whether [the claimant] has suffered from a prescribed disease or a sequela of a prescribed disease at any time since 5 July 1948."

That of course is what the tribunal actually did in the present case, notwithstanding the chairman's inappropriate completion of the review sentence.

9. I draw particular attention to this matter since in other circumstances the inappropriate use of the review sentence on the form MAT 3(II) could evidence an error of law. In particular if in an ordinary appeal from an adjudicating medical authority a tribunal completed that sentence so as to express themselves as being not satisfied by fresh evidence whether the decision of the adjudicating medical authority was given in ignorance of or based on a mistake as to some material fact, that would indicate that they had rejected the appeal on the basis of a test which was unduly restrictive and indeed inapplicable to the appeal before them.

10. It may be for consideration whether the sentence in question should continue to appear on standard forms MAT 3(II) at all, given the scope for confusion and the rarity of applications for review on the basis of fact under section 47(1) of the Administration Act 1992. Whilst it does continue to appear however it should only be completed in a review case for which it was designed.

(signed) J G Mitchell
Commissioner
Date: 30 August 1994